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Via ECF

The Honorable P. Kevin Castel
United States District Judge
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September 22, 2023

Re: *In re Google Digital Advertising Antitrust Litigation*, No. 1:21-md-03010 (PKC)

Dear Judge Castel:

On behalf of Defendants Google, LLC, Alphabet, Inc., and Youtube LLC (collectively, “Google”), we submit this letter in response to Plaintiffs’ letter dated September 20, 2023, ECF No. 631, in which Plaintiffs raise a discovery issue but seek no relief. No conference is scheduled at this time.

Fact discovery in this MDL closes nine months from now, on June 28, 2024. Google has already produced a massive amount of discovery in this MDL. In summary, Google has produced: (1) approximately 4.5 million documents, (2) over 200 terabytes of data, and (3) nearly 80 gigabytes of source code. Consistent with the Coordination Order entered by this Court, ECF No. 564, Plaintiffs in this MDL have received the benefit of the voluminous discovery negotiated with the Department of Justice and produced by Google in the Eastern District of Virginia.

At the last conference, the Court encouraged the parties to conclude their search term and custodian negotiations. May 16, 2023 Conference Tr. 28:23-30:15. To that end, Google engaged in several rounds of negotiations and agreed to more than 100 of Plaintiffs’ proposed search terms. Those are in addition to Google’s 80 proposed search terms plus 23 proposed by Plaintiffs in the Eastern District of Virginia (“Virginia Plaintiffs”). As to custodians, Google has agreed to search the files of more than 150 custodians relevant to this case.¹ As Plaintiffs demand still more search terms and more custodians, Google proposed an allocation of

¹ As part of the negotiations, Google provided Plaintiffs with information concerning Plaintiffs’ proposed additional custodians, including their formal job titles, managerial reporting lines, and/or the extent of their overlap with existing custodians.

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additional search terms and custodians on August 7, 2023, to resolve the parties' remaining differences.

In mid-August, Google identified that certain "ingestion sites"² over which the agreed-upon search terms had been run did not contain all documents for an upcoming deposition in the Virginia case. Google promptly began scoping the issue and, on August 28, Google notified both MDL Plaintiffs and Virginia Plaintiffs of a document production issue that could impact document productions for deponents noticed in the Virginia case. When it became clear that Google would have a substantial number of additional documents to produce and that the issue could impact the fact discovery deadline in the Eastern District of Virginia, Google brought the issue to the attention of the Magistrate Judge Anderson in the Eastern District of Virginia at a hearing on September 1 that was attended by the MDL Plaintiffs.

Google has been diligently working to address the issue from the moment it was discovered. In an effort to review and produce impacted documents as quickly as possible, Google has increased the size of its review team to over 1,000 contract attorneys who are working seven days per week. Google also directed its outside ediscovery vendor to create a second database to improve the speed of the review and production processes.

As a result of this ingestion site issue, and after MDL Plaintiffs rejected Google's August 7 proposal to conclude search term and custodian negotiations, Google's counsel informed Plaintiffs on September 14, 2023, that "the parties are not at an impasse on these issues" but that, because "Google's decisions to agree to additional search terms and custodians have consistently been grounded in principles of proportionality and overall burden," Google could not "agree to additional custodians or search terms until the ingestion site issue has been resolved" and that "it would be inconsistent with the Court's guidance to litigate these issues in the MDL at this time." Since then, Google has produced approximately 385,000 additional documents to Plaintiffs in the MDL.

Against that backdrop we do not understand why Plaintiffs would burden this Court with an amorphous request for a conference to "receive further updates on the status of discovery." ECF No. 631 at 6. As is evident from their letter and presence at the September 1 hearing, Plaintiffs are actively monitoring the Virginia case, where Google is filing weekly status reports on production progress. Google has also provided MDL Plaintiffs with regular updates and has offered to continue to do so. Indeed, last Friday, September 15, 2023, at a regular weekly meet and confer to which all MDL Plaintiffs were invited, Google agreed to Plaintiffs' request to meet and confer *this week* to address any questions that Plaintiffs might have regarding the ingestion site issue. Google requested that Plaintiffs provide advance notice of the specific issues that they

² An ingestion site is a database that houses electronic documents before they are exported to an external vendor for processing in a way that makes them accessible for review.

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would like to discuss so that Google could ensure that appropriate individuals could attend the meet and confer and provide an informed update this week. Plaintiffs declined to do so and instead filed their letter seeking a conference and unspecified “further updates.” Notwithstanding Plaintiffs’ filing, Google remains willing to meet and confer if provided with advance notice of the specific issues Plaintiffs wish to discuss.

* * *

Google is working hard to remediate a discovery issue that it identified and brought to the attention of Plaintiffs in the Virginia case and this MDL. Magistrate Judge Anderson is supervising Google’s efforts to remediate this issue and Google is filing weekly status reports to the Virginia Court. Google does not anticipate that this discovery issue will have any impact on future discovery deadlines in this MDL and Plaintiffs do not suggest otherwise. The Court should therefore deny Plaintiffs’ request for a conference.

Respectfully submitted,

/s/ Justina K. Sessions

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CC: All Counsel of Record (via ECF)